VIRGINIA LAW REGISTER

JNO. GARLAND POLLARD, EDITOR, Richmond, Va.
CHRISTOPHER B. GARNETT, ASSOCIATE EDITOR.

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Justice Brewer Secured.

The Virginia State Bar Association is to be congratulated on having secured Justice David J. Brewer of the supreme court of the United States to deliver the annual address at its meeting to be held at the Hot Springs, Virginia, August 7, 8, and 9. Justice Brewer's addresses on such occasions have become celebrated and he is perhaps more in demand than any other speaker on legal topics in the country.

The report of the last meeting of the association has not yet appeared on account of the printers' strike and the fire in the establishment of the Everett Waddey Company who had the contract for printing the same.

Telegraph Penalty Statute.

Section 1294th(5), Va. Code 1904, imposing a penalty on telegraph and telephone companies for failure to transmit messages faithfully and impartially, has been amended in accordance with the views expressed by the VIRGINIA LAW REGISTER in its editorial in 10 V. L. R. 1025. There has been great diversity in the opinions of the trial courts as to the true meaning and intent of this statute and in many jurisdictions it has been practically nullified. The section as amended negatives the construction put upon the statute by the circuit court of the city of Richmond in Maury & Co. *v.* The W. U. Tel. Co., 10 V. L. R. 991.

At the recent session of the General Assembly an unsuccessful effort was made to put a prohibitive tax of twenty-five hundred dollars per annum on the so-called "corporation companies"

Soliciting Practice.

which have been recently formed in Virginia as an outgrowth of our new and liberal corporation laws. These corporations secure charters, prepare by-laws, obtain licenses for foreign corporations, secure dissolution of corporations, make the reports required by law, keep their clients informed of changes in the law, act as statutory agents, conduct principal offices required by law to be in Virginia, hold the annual meetings for nonresident stockholders, see to the payment of all taxes and fees, etc. In the last year or so it is said that such corporations by wide advertisement and solicitation of business have seriously affected the legal profession. The matter has recently received the attention of the Richmond Bar Association, which body has adopted the following resolution:

> Whereas, it is contrary to the ethics of this Association for its members to solicit practice, or to engage therein for a tariff of fees less than that adopted by the Association.
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> Be it resolved, That, under the rules of this Association, its members are prohibited from being interested in or from acting as representatives of corporations which commit acts, that, if committed by individual members of the Association, would be transgressions of the foregoing provisions.

The above resolution evidently refers to and is founded upon a provision of § 16 of the Code of Ethics of the Richmond and of the State Bar Associations as follows: "Special solicitation of particular individuals to become clients is disreputable;" for this is the only reference to the matter contained in the Code.

Under our laws a corporation can not practice law, for as such it can not have "good moral character," as required by statute, and can not stand the examination before the supreme court. Such law practice as may be secured by them must of necessity be done by their attorneys, so that at best, corporations if they solicit practice, are to that extent but soliciting agencies for the lawyers who represent them. It is just as "disreputable" to use a corporation as a "runner" as to so use an individual, nor is the Code of Ethics any less violated in the case of such a corporation employing an attorney entirely without solicitation on his part. To illustrate with a concrete case: There is a man in Richmond who makes it his business to hunt up suits and carry them to lawyers on commission. It is evidently a violation of the Code

of Ethics for any lawyer to co-operate with such a man, and the principle is not changed by the mere circumstance that the "runner" employs the lawyer rather than the lawyer employing the "runner."

Modern conditions have brought forth several classes of corporations which encroach more or less on the business heretofore transacted by lawyers. Among these corporations are: First, the trust companies, which solicit the business of settling estates; second, collection agencies, which have hundreds and perhaps thousands of drummers on the road daily soliciting the collection of bad claims; third, title companies, which solicit the examination of titles; fourth, employers' liability companies, which insure employers against "damage suits," an important provision of whose contract is that they will furnish attorneys to defend all such suits; and, fifth, corporation companies, referred to above.

Now it is evidently a violation of the Code of Ethics for a lawyer to solicit the settlement of estates, the collection of claims, the examination of titles, the defense of damage suits, or the chartering of companies, yet it is a well-known fact that lawyers of the highest standing represent companies who do thus solicit. Perhaps it was the intention of the resolution passed by the Bar Association to some extent limit the application of the provision of the Code of Ethics and to draw a distinction between corporations soliciting business which only licensed lawyers can perform and soliciting business which may be performed by others, although generally performed by lawyers. For instance, the trust companies solicit the settlement of estates, and although lawyers frequently settle estates, and a large part of their income is derived from that source, yet a man can settle estates without being a licensed lawyer. If this distinction is intended to be drawn and the Association means to say that under the Code of Ethics lawyers are prohibited only from soliciting *law practice* in a strict sense of that term, then surely the old ideals are shattered; for then the lawyer, without any breach of ethics, may do as these companies do; that is, solicit the settlement of estates, the collection of claims, the examination of titles, etc., for all of these things may be lawfully done by one who is not a licensed lawyer (See Va. Code, § 3194), although heretofore

they have usually been done by lawyers. In short, the profession finds itself in this quandary: It must either retreat from its time-honored rule against "special solicitation of particular individuals to become clients" or it must set its face against an inevitable outcome of modern conditions. The functions performed by the corporations above mentioned can be better and more economically performed by corporations organized for the purpose, and it is folly for the bar to resist the tendency. We have sadly and reluctantly come to the conclusion that our time-honored rule against solicitation must be readjusted to meet modern conditions. It is manifestly folly to say to the lawyer, "You can not as an individual solicit the settlement of estates, the collection of claims, the examination of titles, etc., but if you associate yourself with two others and get a charter you may solicit to your heart's content."

Our conclusion is that the bar is driven by the logic of events to restrict its rule against the solicitation of practice to the solicitation of litigated cases. Corporations can not conduct such cases because admission to practice in the courts must depend on individual character and ability, and corporations are not and perhaps never will be allowed to represent clients at the bar of justice.

Substitution of Trustees—Code Sec. 3419.

We are informed that there is a wide difference in the practice in the courts of the State under Sec. 3419 of the Code relating to the substitution of trustees. That section provides that when a trustee dies or removes beyond the limits of the State, declines to accept the trust, or resigns, the court may, on motion of any person interested, substitute a new trustee. According to the terms of the statute the motion must be made after notice to all parties interested in the execution of the trust.

The first question arising is;—when the trustee is dead, is his personal representative "interested in the execution of the trust" within the meaning of the statute? The late Judge Lamb of the Chancery Court of the City of Richmond, who was noted for his great caution, required the personal representative of the trustee

to be served with notice of the motion. This, however, was thought unnecessary by many practitioners in his court and we are informed that other courts do not require such notification. On this point, however, we should be glad to hear from the bench and the bar. Perhaps Judge Lamb's opinion was in part at least founded on the further provision of the same section to the effect that the personal representative of the deceased trustee shall execute the trust until such substitution is made. Furthermore, it might happen that a part of the trust has been executed by the deceased trustee and his estate therefore entitled to commissions. Should his personal representative therefore be notified in order that he might protect himself against the distribution of the trust fund without payment of commissions due the deceased? This state of facts, however, rarely applies to the ordinary trust deed to secure the payment of a debt.

The second. Suppose the ground of the substitution is that the trustee named in the deed has removed beyond the limits of the State,—must either a personal service be made under Section 3232 or an order of publication be issued as to him? Is such a trustee "interested in the execution of the trust" within the meaning of the statute? Our own idea is that where a trustee has done nothing towards the execution of the trust and has removed beyond the limits of the State and the grantor and beneficiary are both parties to the proceedings, it is unnecessary to serve notice by publication or otherwise on such a trustee. When a trustee moves beyond the jurisdiction of the court, that fact under the statute revokes his trusteeship at the instance of a party interested. We do not believe that the statute contemplates service of notice or order of publication as to trustees who have left the State. Indeed, the statute itself provides that when there are two trustees and one removes from the State, the other may execute the trust. The fact that no notice is in such cases required to be given the non-resident trustee shows that he is not considered to be a party interested. On the other hand it may be argued that notice should be given the trustee alleged to have removed from the State, in order that he may have an opportunity to be heard on the question as to whether he has in fact removed and whether he has partially executed the trust so as to entitle him

to commissions. In this connection it should be borne in mind that if a trustee who has moved out of the State is "a party interested" and an order of publication is issued as to him, or personal service had under Section 3232, he would still, under Section 3233, have three years in which to appear and petition to have the matter reheard. This fact would make it unsafe to accept a release deed from substituted trustees until three years after such substitution.

Our opinion as to this, however, is not sufficiently deep set to warrant us in not serving notice or issuing order of publication as to non-resident trustees where failure to do so might possibly affect the title to valuable property. We have heard some of the most experienced real estate lawyers say that they would not accept a title to property where a release deed on the same was executed by a substituted trustee who was appointed in the stead of a trustee who moved beyond the limits of the State where the latter trustee was not served with notice or order of publication issued as to him. On the other hand, we have heard lawyers of equal ability and experience say that they would recommend the acceptance of such a title.

The third. What evidence should be required by the court of the death or removal of a trustee? Is it sufficient that the petition (if one is presented) simply allege the death or removal, and that this is not controverted by the other parties to the proceedings, or should the court require affidavits or depositions proving such facts?

All of the questions raised above might be settled by proper amendment of the statute.